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Sent: Thursday, August 10, 2006 5:02 PM

To: Kmet, Peter

Cc: Toebe, Wayne E; Thompson, Suzette A; Ruck, Fred A III; Landon, Roger J; Fritz, Lori

Subject: Comments on draft rule revisions to the MTCA Cleanup Regulations

Mail Stop H8-12
P.O. Box 1000
Richland, Washington 99352

Mr. P. Kmet
Washington State Department of Ecology
Toxics Cleanup Program
P.O. Box 47600
Olympia, Washington 98504-7600

Dear Mr. Kmet:

Attached are comments developed by Fluor Hanford on the draft rule amendments. These comments were developed in response to the notice concerning these draft amendments that was provided on the Department of Ecology web site.

Additionally, Fluor Hanford has reviewed comments provided to you by Washington Closure Hanford, and supports those comments.

Thank you for the opportunity to provide comments at this early stage of rule development.

Should you have questions, please contact Mr. Wayne Toebe at 372-2359.

Rick Engelmann
Deputy Director
Fluor Hanford Environmental Protection

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FLUOR HANFORD COMMENTS ON ECOLOGY PREPROPOSAL TO AMEND MTCA REGULATIONS FOR CERTAIN TYPES OF CHEMICAL MIXTURES

1. The stated purpose of the rulemaking is “to clarify the policies and procedures for establishing cleanup levels for mixtures of polychlorinated dibenzo-p-dioxins/polychlorinated dibenzofurans (dioxins/furans), polycyclic aromatic hydrocarbons (PAHs) and polychlorinated biphenyls (PCBs).” The proposed language changes appear to do more than clarify policies and procedures. Does Ecology intend to amend the rule to establish new regulatory requirements for affected cleanups, or is Ecology using the rulemaking process to codify procedures that reflect Ecology policy regarding cleanup expectations? Would the rulemaking simply clarify Ecology understanding of the intent of the referenced methodologies or is Ecology seeking to convert procedures from the methodologies into requirements?
2. Do the proposed amendments for mixtures of dioxins/furans simply incorporate as procedures certain details that reflect the USEPA interpretation regarding application of Toxicity Equivalency Factors (TEFs), or do these amendments establish an Ecology interpretation for application of the methodology that is possibly more stringent than or inconsistent with the UPEPA intent for application of the methodology? Does Ecology intend to provide detailed explanation to the regulated community, with opportunity to comment, regarding the rationale for proposed changes to the existing provisions?
3. Do the proposed amendments for mixtures of polycyclic aromatic hydrocarbons simply incorporate as procedures certain details that reflect the California EPA interpretation regarding application of TEFs, or do these amendments establish an Ecology interpretation for application of the methodology that is possibly more stringent than or inconsistent with the California EPA intent for application of the methodology? Does Ecology intend to provide detailed explanation to the regulated community, with opportunity to comment, regarding the rationale for proposed changes to the existing provisions?
4. According to a past evaluation by the Washington Attorney General Office, Ecology authority for regulation of federally-regulated PCBs is limited or perhaps even precluded by RCW 70.105.030. WAC 173-303-071(3)(k) provides an exclusion for management of federally-regulated PCBs. Does this exclusion have any meaning under MTCA? Has Ecology performed or contracted any analysis regarding the scope of its authority for regulation of federally-regulated PCBs under the MTCA? Do the current rules apply to all PCBs, or only to PCBs that are unregulated by EPA?
5. Currently, WAC 173-340-900, Table 720-1, requires determination of PCB mixtures by applying Equation 720-2, which in turn applies a carcinogen potency factor (CPF) using WAC 173-340-708(8), which in turn, establishes a specific hierarchy for determining CPFs for PCBs. It appears that this proposal will eliminate the current approach and replace it with TEF application without clear basis. If our reading is

correct, what is the basis changing the existing hierarchy in determining CPFs for PCBs?

6. Currently, WAC 173-340-900, Table 740-1, defers to PCB remediation waste cleanup standards of 40 CFR 761.61 for PCB cleanup. Federal programs have established PCB cleanup levels of 1 part per million in soil to be generally protective of human health and the environment. Furthermore, federal EPA studies show that PCBs are less hazardous than previously believed. Does Ecology anticipate that this proposal will have any effect on the existing cleanup standards for PCBs in soil? If so, what effect does Ecology anticipate, and what is the basis any resulting changes in cleanup requirements or perceived cleanup requirements for PCBs in soil?
7. In the draft rule revision, Ecology proposes to add a new section at WAC 173-340-807(8)(f) specific to PCB mixtures. It appears that this change, coupled with the proposed change to -807(h), would completely change the approach for cleanup of PCBs. Specifically, it appears that, instead of establishing a CPF for PCBs based on availability in specified EPA sources or consultation with EPA and other qualified parties, it would require use of TEFs. If this is accurate, please explain the rationale for such a proposed change.
8. Currently, WAC 173-340 defines PCBs and PCB mixtures to mean the same thing. The proposed rule does not include a proposed modification to this definition. Is Ecology proposing a distinction between PCBs and PCB mixtures, and if so, what is the proposed distinction?